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Troy & Valerie Whelton

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Troy & Valerie Whelton,

Plaintiffs,

vs.

Michael Sipes Law Firm; and DOES 1-10,
inclusive,

Defendants.

Case No.:

COMPLAINT

For this Complaint, the Plaintiffs, Troy & Valerie Whelton, by undersigned
counsel, state as follows:

JURISDICTION

1. This action arises out of Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the invasions of Plaintiffs' personal privacy by the Defendants and its agents in their illegal efforts to collect a consumer debt.

2. Original and supplemental jurisdiction exists pursuant to 28 U.S.C. §§ 1331, 1367.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendants transact business here and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

4. The Plaintiffs, Troy & Valerie Whelton (hereafter "Plaintiffs"), are adult individuals residing at 17205 West Carribean Lane, Surprise, Arizona 85388, and are each "consumers" as the term is defined by 15 U.S.C. § 1692a(3).

5. The Defendant, Michael Sipes Law Firm (hereafter "Sipes"), is a California business entity with an address of 9381 E. Stockton Blvd, Suite 116, Elk Grove, California 95624, operating as a collection agency, and is a "debt collector" as the term is defined by 15 U.S.C. § 1692a(6).

6. Does 1-10 (the "Collectors") are individual collectors employed by Sipes and whose identities are currently unknown to the Plaintiffs. One or more of the

1 Collectors may be joined as parties once their identities are disclosed through
2 discovery.

3
4 7. Sipes at all times acted by and through one or more of the Collectors.

5
6 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

7 **A. The Debt**

8
9 8. The Plaintiff Valerie Whelton incurred a financial obligation (the “Debt”) to an
10 original creditor (the “Creditor”).

11 9. The Debt arose from services provided by the Creditor which were primarily
12 for family, personal or household purposes and which meets the definition of a “debt”
13 under 15 U.S.C. § 1692a(5).

14 10. The Debt was purchased, assigned or transferred to Sipes for collection, or
15 Sipes was employed by the Creditor to collect the Debt.
16

17
18 11. The Defendants attempted to collect the Debt and, as such, engaged in
19 “communications” as defined in 15 U.S.C. § 1692a(2).
20

21 **B. Sipes Engages in Harassment and Abusive Tactics**

22
23 12. On or about August 1, 2011, Sipes placed a call to Mrs. Whelton’s parents.
24 Sipes informed these third parties that if Ms. Whelton did not return its call, then it
25 would “send [the Debt] to Federal Court” in an attempt to collect the Debt. Sipes
26 placed several calls to Ms. Whelton’s parents with regard to the Debt.
27
28

1 13. Sipes placed one of its calls to Mrs. Whelton's parents at approximately
2 11:30p.m. Michigan time.

3
4 14. Mrs. Whelton returned Sipes's phone call to her parents and discussed the Debt.
5 Sipes informed Mrs. Whelton that it would be taking the Debt to court and that it
6 would seize her things to cover the Debt. To date, no such action has been taken.
7

8 15. Sipes placed a subsequent call to Mrs. Whelton in September 2011 in an
9 attempt to collect the Debt.

10 16. Sipes used extremely abusive language when speaking with Mrs. Whelton,
11 accusing her of "hiding behind her phone" rather than paying the Debt. Mrs. Whelton
12 was extremely upset after speaking with Sipes.
13

14 17. Mr. Whelton placed a call to Sipes to determine why his wife was so upset.
15 Sipes used extremely abusive language when speaking with Mr. Whelton.
16

17 18. Sipes asked Mr. Whelton, "Are the kids [Mr. and Ms. Whelton's children] not
18 going to pay their bills too?"
19

20 19. Sipes asked Mr. Whelton, "What kind of husband are you, letting your wife not
21 pay her bills?!"
22

23 20. Further, after learning that both Mr. and Ms. Whelton were in the military,
24 Sipes sarcastically told Mr. Whelton, "It's nice to know we have people like you
25 defending our country."
26
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1 21. Ms. Whelton has asked that Sipes send her written correspondence about the
2 Debt. To date, Sipes has failed to do so.
3

4 **C. Plaintiffs Suffered Actual Damages**
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6 22. The Plaintiffs have suffered and continue to suffer actual damages as a result of
7 the Defendants' unlawful conduct.
8

9 23. As a direct consequence of the Defendants' acts, practices and conduct, the
10 Plaintiffs suffered and continue to suffer from humiliation, anger, anxiety, emotional
11 distress, fear, frustration and embarrassment.
12

13 24. The Defendants' conduct was so outrageous in character, and so extreme in
14 degree, as to go beyond all possible bounds of decency, and to be regarded as
15 atrocious, and utterly intolerable in a civilized community.
16

17 **COUNT I**
18

19 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

20 **15 U.S.C. § 1692, et seq.**

21 25. The Plaintiffs incorporate by reference all of the above paragraphs of this
22 Complaint as though fully stated herein.
23

24 26. The Defendants contacted third parties and failed to confirm or correct location
25 information, in violation of 15 U.S.C. § 1692b(1).
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1 27. The Defendants informed third parties of the nature of Plaintiffs' debt and
2 stated that the Plaintiffs owed a debt, in violation of 15 U.S.C. § 1692b(2).

3
4 28. The Defendants contacted third parties in regards to the Plaintiffs' debt on
5 numerous occasions, without being asked to do so, in violation of 15 U.S.C. §
6 1692b(3).

7
8 29. The Defendants contacted the Plaintiff Mrs. Whelton's parents before 8:00 a.m.
9 and after 9:00 p.m., in violation of 15 U.S.C. § 1692c(a)(1).

10 30. The Defendants communicated with individuals other than the Plaintiffs, the
11 Plaintiffs' attorney, or a credit bureau, in violation of 15 U.S.C. § 1692c(b).

12
13 31. The Defendants engaged in behavior the natural consequence of which was to
14 harass, oppress, or abuse the Plaintiffs in connection with the collection of a debt, in
15 violation of 15 U.S.C. § 1692d.

16
17 32. The Defendants used profane and abusive language when speaking with
18 Plaintiffs, in violation of 15 U.S.C. § 1692d(2).

19
20 33. The Defendants caused a phone to ring repeatedly and engaged the Plaintiffs in
21 telephone conversations, with the intent to annoy and harass, in violation of 15 U.S.C.
22 § 1692d(5).

23
24 34. The Defendants threatened the Plaintiffs with seizure of their property if the
25 debt was not paid, in violation of 15 U.S.C. § 1692e(4).

1 35. The Defendants threatened to take legal action, without actually intending to do
2 so, in violation of 15 U.S.C. § 1692e(5).

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4 36. The Defendants employed false and deceptive means to collect a debt, in
5 violation of 15 U.S.C. § 1692e(10).

6
7 37. The Defendants failed to send the Plaintiffs a validation notice stating the
8 amount of the debt, in violation of 15 U.S.C. § 1692g(a)(1).

9
10 38. The Defendants failed to send the Plaintiffs a validation notice stating the name
11 of the original creditor to whom the debt was owed, in violation of 15 U.S.C. §
12 1692g(a)(2).

13
14 39. The Defendants failed to send the Plaintiffs a validation notice stating the
15 Plaintiffs' right to dispute the debt within thirty days, in violation of 15 U.S.C. §
16 1692g(a)(3).

17
18 40. The Defendants failed to send the Plaintiffs a validation notice informing the
19 Plaintiffs of a right to have verification and judgment mailed to the Plaintiffs, in
20 violation of 15 U.S.C. § 1692g(a)(4).

21
22 41. The Defendants failed to send the Plaintiffs a validation notice stating the
23 Plaintiffs' right to request the name and address of the original creditor, in violation of
24 15 U.S.C. § 1692g(a)(5).

25
26 42. The foregoing acts and omissions of the Defendants constitute numerous and
27 multiple violations of the FDCPA, including every one of the above-cited provisions.

1 43. The Plaintiffs are entitled to damages as a result of the Defendants' violations.

2
3 **COUNT II**

4 **INVASION OF PRIVACY BY INTRUSION UPON SECLUSION**

5 44. The Plaintiffs incorporate by reference all of the above paragraphs of this
6 Complaint as though fully stated herein.
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8 45. The Restatement of Torts, Second, § 652(b) defines intrusion upon seclusion as,
9 "One who intentionally intrudes...upon the solitude or seclusion of another, or his
10 private affairs or concerns, is subject to liability to the other for invasion of privacy, if
11 the intrusion would be highly offensive to a reasonable person."
12

13 46. Arizona further recognizes the Plaintiffs' right to be free from invasions of
14 privacy, thus Defendants violated Arizona state law.
15

16 47. The Defendants intentionally intruded upon Plaintiffs' right to privacy by
17 continually harassing the Plaintiffs with abusive language and third party
18 communications.
19

20 48. The telephone calls made by Defendants to the Plaintiffs were so persistent and
21 repeated with such frequency as to be considered, "hounding the Plaintiffs," and, "a
22 substantial burden to her existence," thus satisfying the Restatement of Torts, Second,
23 § 652(b) requirement for an invasion of privacy.
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1 49. The conduct of the Defendants in engaging in the illegal collection activities
2 resulted in multiple invasions of privacy in such a way as would be considered highly
3 offensive to a reasonable person.
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5 50. As a result of the intrusions and invasions, the Plaintiffs are entitled to actual
6 damages in an amount to be determined at trial from Defendants.
7

8 51. All acts of Defendants and its agents were committed with malice, intent,
9 wantonness, and recklessness, and as such, Defendants are subject to punitive
10 damages.
11

12 **COUNT III**

13 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

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15 52. The Plaintiffs incorporate by reference all of the above paragraphs of this
16 Complaint as though fully set forth herein at length.

17 53. The acts, practices and conduct engaged in by the Defendants vis-à-vis the
18 Plaintiffs was so outrageous in character, and so extreme in degree, as to go beyond
19 all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable
20 in a civilized community.
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23 54. The foregoing conduct constitutes the tort of intentional infliction of emotional
24 distress under the laws of the State of Arizona.
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1 55. As a result of the Defendants' intentional infliction of emotional distress, the
2 Plaintiffs are entitled to actual damages in an amount to be determined at trial from
3
4 Defendants.

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6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Plaintiffs pray that judgment be entered against the
8 Defendants:

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10 A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the
11 Defendants;

12 B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C.
13 §1692k(a)(2)(A) against the Defendants;

14 C. Costs of litigation and reasonable attorney's fees pursuant to
15
16 15 U.S.C. § 1692k(a)(3) against the Defendants;

17 D. Actual damages from the Defendants for the all damages including
18 emotional distress suffered as a result of the intentional, reckless, and/or
19 negligent FDCPA violations and intentional, reckless, and/or negligent
20 invasions of privacy in an amount to be determined at trial for the
21 Plaintiffs;

22 E. Punitive damages;

23 F. For Plaintiffs' statutory costs in relation to Arizona claim(s) pursuant
24 to A.R.S. § 12-341; and
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1 G. Such other and further relief as may be just and proper.
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3 **TRIAL BY JURY DEMANDED ON ALL COUNTS**
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7 DATED: October 10, 2011

LEMBERG & ASSOCIATES, LLC

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10 By: /s/ Kindra Deneau
Kindra Deneau

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12 Attorney for Plaintiffs
13 Troy & Valerie Whelton
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